



State of Montana  
Office of The Governor  
Helena 59601

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THOMAS L. JUDGE  
GOVERNOR

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JUN 8 1977

June 25, 1977

MONT. DEPT. of NATURAL  
RESOURCES & CONSERVATION

The Honorable Edmund Muskie, Chairman  
Senate Subcommittee on Environmental Pollution  
Room 4204, Dirksen Senate Office Building  
Washington, D. C. 20510

Dear Senator Muskie:

Enclosed is a written statement outlining the position of the State of Montana on the 404 permit program under Section 404 of the Federal Water Pollution Control Act Amendments of 1972. Please enter the statement as a part of the record of your Subcommittee hearings on amendments to P.L. 92-500.

Best regards.

Sincerely,

THOMAS L. JUDGE  
Governor

Enclosure

cc: Senator Lee Metcalf  
Senator John Melcher  
Representative Max Baucus  
Representative Ron Marlenee

bc: Mr. John Orth  
Lieutenant Governor Ted Schwinden

POSITION OF STATE OF MONTANA

THOMAS L. JUDGE, GOVERNOR

Since its court-ordered inception in March 1975, the 404 permit program administered by the Corps of Engineers has been consistently and vigorously opposed by the State of Montana. As Governor, I have submitted testimony requesting repeal or amendment of the law which established the program, and written to our Congressional delegation accordingly. The Legislature of Montana passed a resolution (HJR 43) during its 1977 session advocating repeal of the law (copy attached). In addition, the 404 program has received widespread and unified opposition from all Western states through the Western States Water Council, the Old West Regional Commission, and many other organizations representing the state governments in the West. In spite of this opposition, the program continues without change.

Mandated under Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500), the 404 permit program is without doubt one of the most wasteful and bureaucratic programs ever perpetrated upon the people of this nation. Not only does implementation of the law require the administration of a program which is impossible to efficiently administer, but it requires thousands of farmers, ranchers, and ordinary citizens to obtain dredge and fill permits for inconsequential projects after waiting several months for government action. Above all, the program duplicates programs already administered locally or at the state government level, especially in Montana.

Our state is recognized as one of the most progressive in environmental controls. Many of our laws, which I have strongly supported and

recommended, such as the Montana Major Facility Siting Act and the Mined Land Reclamation Act, are considered to be the toughest in the nation. To the 404 program's purpose - to preserve the environment, particularly water quality - we do not object; to its duplication of existing state laws and its abundance of bureaucratic red tape, we do.

Montana currently administers a number of laws, most of them recently enacted, which regulate dredge-and-fill operations in the state. The most notable of these is the Natural Streambed and Land Preservation Act of 1975 (Section 26-1510 et seq., R.C.M. 1947). This law, administered locally by our 59 conservation districts, has been quite successful. The streams in Montana are now being protected from unwise disturbance, and the red tape is kept to a minimum. Action on applications for projects including the streambed can be obtained at a local level in a few weeks, rather than in several months from the Corps in the 404 program. The Montana law covers exactly the same project covered under the Section 404 program, a fact the Corps recently recognized by issuing a general permit for riprap projects in Montana.

Other laws, such as the Montana Water Use Act, the State Water Pollution Control Act, the Floodplain Management and Regulation Act, the Lakeshore Protection Act, and the Open Cut Mining Act, also regulate dredge and fill activities in certain cases. There is not dredge and fill activity covered by the 404 program that is not also covered under Montana state law.

We oppose federal intrusion into areas of resource management which are best left to the states and local governments. The 404 program is an example of such unwarranted intrusion. Therefore, I strongly urge that Congress either repeal the program or amend the law to allow the states to administer their own laws without hindrance from the federal

government. H.R. 3199, S. 597, and S. 331, introduced this session in Congress, would accomplish that purpose.



HOUSE JOINT RESOLUTION NO. 43

INTRODUCED BY FABREGA, CONROY, MEYER, KROPP,  
ELLISON, O'KEEFE, SEVERSON, BURNETT, WYRICK, MARKS,  
DAY, PORTER, FEDA, BRAND, SILVERTSEN, NATHIE, SEIPERT

IN THE HOUSE

January 28, 1977

Introduced and referred to  
Committee on Judiciary.

February 11, 1977

Committee recommend bill do  
pass. Report adopted.

February 12, 1977

Printed and placed on members'  
desks.

February 15, 1977

Second reading, do pass.

February 16, 1977

Considered correctly engrossed.

February 17, 1977

Third reading, passed.  
Transmitted to second house.

IN THE SENATE

February 18, 1977

Introduced and referred to  
Committee on Agriculture,  
Livestock and Irrigation.

February 26, 1977

Committee recommend bill be  
concurrent in. Report adopted.

March 3, 1977

Second reading, be concurrent in.

March 5, 1977

Third reading, be concurrent in.

IN THE HOUSE

March 5, 1977

Returned from second house.  
Bill concurrent in.

March 7, 1977

Sent to enrolling.  
Reported correctly enrolled.

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES  
OF THE STATE OF MONTANA URGING REPEAL OF SECTION 404 OF THE  
FEDERAL WATER POLLUTION CONTROL ACT.

WHEREAS, Section 404 of the Federal Water Pollution Control  
Act (Public Law 92-500) is an unconstitutional delegation of  
legislative authority to the military; and

WHEREAS, Section 404 violates the traditional separation of  
military and civilian departments, unreasonably conferring  
civilian authority on the United States Army; and

WHEREAS, the United States Army is not a suitable or  
practicable body for conferral of executive regulatory agency  
powers; regulatory powers are traditionally conferred on  
nonmilitary executive agencies, except for specific military  
functions; and

WHEREAS, Section 404 unconstitutionally confers jurisdiction  
upon the Army for all waters of the United States, not merely  
navigable waters, thus violating the traditional constitutional  
doctrine of state's rights because nonnavigable waters are outside  
the area of interstate commerce and within the area of state  
jurisdiction; and

WHEREAS, Section 404 would cover residential property, and  
through exceptions, even cover titulary exempted farmlands, which  
is a gross violation of the police and public health and safety  
jurisdiction of the states.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the U.S. Congress is urged to repeal Section 404 of the Federal Water Pollution Control Amendments of 1972 as an unconstitutional delegation of authority.

(2) That the Attorney General of Montana is also directed to file an action in the name of the people of the State of Montana in Federal District Court to have that section of the act declared unconstitutional. The Attorney General is also directed to contact the Attorneys General of each of the states and to use his best efforts to enlist their support for a joint suit by the several states against the United States Army Corps of Engineers and the United States Government for Section 404's violation of "state's rights".

I hereby certify that the  
within joint resolution  
originated in the House.

Martha R. McLean  
Chief Clerk

John B. Dwyer  
Speaker of the House  
Signed this 9<sup>th</sup> day  
of March 1977.

Wendell M. Carter  
President of the Senate  
Signed this 10<sup>th</sup> day  
of March 1977.